

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:18-cv-01325

IN THE SUM OF \$42,054.45 IN U.S. CURRENCY,

Defendant.

VERIFIED COMPLAINT FOR FORFEITURE IN REM

Plaintiff, United States of America, by its representative, Christopher R. Arthur, Assistant United States Attorney for the Southern District of West Virginia, hereby brings this Complaint and alleges as follows in accordance with Supplemental Rule G of the Federal Rules of Civil Procedure:

NATURE OF THE ACTION

1. This is a civil forfeiture action brought on behalf of the United States of America, for the forfeiture of a certain sum in the amount of \$42,054.45 ("Funds") of U.S. currency constituting proceeds of, or substitute assets up to an equivalent value ("Substitute Assets") which was used or intended to be used in any manner or part to commit or to facilitate the commission of one or more violations of 21 U.S.C. § 331 and therefore are subject to forfeiture pursuant to 18 U.S.C. § 982(a)(7).

### **FUNDS IN REM AND POTENTIAL INTERESTED PARTIES**

2. The Funds or Substitute Assets are directly traceable to Mr. Karl O'Dell's ("Mr. O'Dell") illegal activity pursuant to 18 U.S.C. § 371; 21 U.S.C. § 331, and is being forfeited under 18 U.S.C. § 982(a)(7).

### **JURISDICTION AND VENUE**

3. Plaintiff, United States of America, brings this action in rem in its own right to forfeit and condemn Mr. O'Dell's Funds, or to seize Substitute Assets from the illegal activity. This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. § 1355(a); and over this particular action under 18 U.S.C. § 982(a)(7).

4. Venue is proper in this district, pursuant to 28 U.S.C. § 1355(b)(1)(A), since the acts or omissions giving rise to the forfeiture occurred in the Southern District of West Virginia.

### **BASIS FOR FORFEITURE**

5. The Funds or Substitute Assets up to an equivalent value are subject to forfeiture pursuant to 18 U.S.C. § 982(a)(7) as property constituting, derived from, or traceable as proceeds to a violation of 21 U.S.C. § 331, a federal health care offense within the meaning of 18 U.S.C. § 24, involving the introduction

into interstate commerce of a modified drug, or the conspiracy to modify a drug.

6. Plaintiff intends to rely on the provisions of 18 U.S.C. §§ 983 and 984, and Rule 32.2 of the Federal Rules of Criminal Procedure to establish that the Funds or Substitute Assets are subject to a forfeiture as set forth herein.

#### FACTS

7. The below facts alleged in this Complaint are Verified by Special Agent Mark V. Bartley of the United States Food and Drug Administration.

8. Mr. O'Dell, in his capacity as the president, owner and pharmacist-in-charge of the Boyd County Pharmacy, conspired to introduce and cause to be introduced into interstate commerce quantities of oxycodone and hydrocodone, both drugs or controlled substances within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321(p), which were misbranded under 21 U.S.C. § 353(b)(1), and held for sale after being shipped in interstate commerce, a prohibited act under 21 U.S.C. § 331(k).

9. After receiving large quantities of the powder oxycodone and hydrocodone, Mr. O'Dell manufactured oxycodone and hydrocodone capsules in bulk quantities. Mr. O'Dell then dispensed the capsules to the Clinic patients with knowledge that the prescriptions written by the Clinic physicians for the compounded

oxycodone and hydrocodone were not for a legitimate medical purpose by the Clinic practitioners and, therefore, were not valid prescriptions.

10. On or about April 5, 2017, Mr. O'Dell pled guilty to a single-count violation of 18 U.S.C. 371 (conspiracy to misbrand).

11. In the plea agreement, Mr. O'Dell "agrees that he profited from the offense of conviction in the amount of \$42,054.45."

12. Mr. O'Dell further "agrees to the filing of a civil action by the United States for unjust enrichment by him in the amount of \$42,054.45. Mr. O'Dell agrees to waive service of the complaint and agrees to assist the United States by providing sworn testimony and to execute any documents deemed necessary by the United States to effectuate the settlement and transfer of a money judgment in the amount of \$42,054.45 to the United States."

13. The Court scheduled the sentencing hearing to occur on November 29, 2018.

14. The \$42,054.45 in funds identified for forfeiture herein constitute or are derived from payments to Mr. O'Dell that were funded by the illegal activities described.

15. Mr. O'Dell used the \$42,054.45 to facilitate his criminal activities.

16. Mr. O'Dell was unjustly enriched by the receipt of

\$42,054.45 in funds derived from illegal activities.

17. If the \$42,054.45 in Funds no longer are available, then the United States seeks substitute assets that are available up to an equivalent value.

WHEREFORE, the United States prays that process of warrant in rem issue for the arrest of the currency in the amount of \$42,054.45; that due notice be given to all parties to appear and show cause why the forfeiture should not be decreed; that judgment be entered declaring funds in the amount of \$42,054.45 or substitute assets up to comparable value be forfeited to the United States for disposition according to law; and that the United States be granted such other relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Respectfully submitted,

Michael B. Stuart  
United States Attorney

s/ Christopher R. Arthur  
Christopher R. Arthur  
Assistant United States Attorney  
WV State Bar No. 9192  
300 Virginia Street, 4000  
Charleston, WV 25701  
Telephone: 304-340-3522  
Fax: 304-347-5104  
E-mail: [chris.arthur@usdoj.gov](mailto:chris.arthur@usdoj.gov)

VERIFICATION

I, Mark Bartley, Food & Drug Administration, declare under penalty of perjury as provided by 28 U.S.C. § 1746, the following:

That the foregoing Complaint for Forfeiture in rem is based upon information I have gathered and which has been provided to me by various law enforcement personnel, and that everything contained therein is true and correct to the best of my knowledge and belief.

Executed on September 27<sup>th</sup>, 2018.

Mark Bartley

Taken, subscribed and sworn to before me this 27<sup>th</sup> day of September, 2018.



Diana L. Roberts  
Notary Public

My commission expires on April 26, 2020.



JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

**DEFENDANTS**

The sum of \$42,054.45 in United States Currency

County of Residence of First Listed Defendant Kanawha

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                                   |   | PTF                        | DEF                        |
|---|----------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

21 U.S.C. 331

Brief description of cause:

Forfeiture or drug proceeds

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/27/18

SIGNATURE OF ATTORNEY OF RECORD

Christopher R. Orth

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_